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BEFORE THE

SURFACE TRANSPORTATION BOARD

EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF BUNGE CORPORATION IN RESPONSE TO ADVANCE NOTICE OF PROPOSED RULEMAKING

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Dated: May 16, 2000

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Bunge Corporation ("Bunge") is submitting these comments in response to the Board's Advance Notice of Proposed Rulemaking ("ANPR"). Bunge is a diverse agricultural and food company that merchandises grain and produces numerous agricultural products. It is the third largest crusher of soybeans in North America, as well as a large corn processor. Bunge's soybean facilities produce crude soybean oil and soybean meal, and refine crude soybean oil into cooking or consumer products.

Bunge believes strongly that the Board's outlook toward Class I rail mergers, and its rules for those mergers, should be altered. The primary area of concern to Bunge is the enhanced market power which mergers bestow on the consolidated carrier -- power which is used to curtail market access and marketing choices and changes normal market flows. Mergers should be conditioned in an effective manner to prevent those practices.

In Ex Parte No. 582, Public Views on Major Rail Consolidations (March 17, 2000), the Board noted, in recounting shipper testimony offered throughout four days of hearings, that many rail customers "are of the view that prior consolidations have left large railroads with too much market power." Slip op. at 5. Bunge agrees.

In the past, the ICC and the Board have taken the position that a shipper served by a single railroad prior to a merger can end up in no worse position as a result of the merger, even if the identity or system structure of the serving carrier is changed by the merger. Bunge believes that outlook is unrealistic.

Consolidation of Class I railroads has brought about a dramatic loss of competitive alternatives and has placed shippers in a precarious position. If judged by rates alone -- at least in the agricultural sector -- mergers might not seem to have had that effect. But pricing is not the only way a railroad can exercise or abuse its market power. Stations with just one railroad stand to lose competitive route alternatives when the serving carrier is involved in a merger.

As a carrier gets larger, it becomes less willing to share its originations with other railroads. The railroad that was the sole serving carrier prior to the merger may not have had broad single-line coverage and was willing to route in conjunction with all connecting lines. After a merger, the surviving, larger carrier is unwilling to allow that routing freedom to continue. The merged carrier can and does dictate where the shipper's products will go or where product will come from.

This company is heavily reliant on rail transportation to distribute its soybean products and, in some cases, to receive soybeans for processing. The two primary products of a soybean crushing facility are soybean oil and soybean meal. Meal is an animal and poultry feed ingredient. It is consumed where animals and poultry are raised, by feed distributors and feedlot operators that receive soybean meal and integrate it into feed programs. Many of the animal and feed markets are located substantial distances from areas where soybeans are grown. Accordingly, rail becomes an essential means of distributing soybean meal, since this product is shipped over long distances. Because of that reliance, the soybean crushing industry is highly vulnerable to the exercise of rail market power.

It has been Bunge's experience that major rail mergers inspire the surviving carrier to use its newfound market power in a manner that curtails market options and choices causing inefficiencies in the market. Other shippers no doubt have had similar experiences, as described in Ex Parte No. 582, but these comments will concentrate on Bunge's experiences.

Prior to Burlington Northern's acquisition of Santa Fe, Bunge had (and still has) a major soybean crushing plant at Emporia, KS that was served exclusively by Santa Fe. Throughout the many years that Santa Fe served Bunge's Emporia facility, Santa Fe provided routes and rates over a variety of gateways, enabling Bunge's Emporia soybean meal to reach markets on numerous other railroads. The BNSF merger changed that.

In the last complete Bunge fiscal year prior to the merger (April 1994-March 1995), approximately 1/4 of Bunge's substantial soybean meal output from its Emporia plant, also amounting to approximately 40 percent of its rail shipments, moved via Santa Fe/Southern Pacific gateways to destination markets on Southern Pacific. Today, as has been the case ever since the merger between BN and Santa Fe was fully implemented, approximately <u>one percent</u> of Bunge's Emporia rail shipments of soybean meal move to customers on the former Southern Pacific lines, now operated by Union Pacific, reflecting almost a complete termination of our Southern Pacific/Union Pacific markets.

This huge market loss came about because the BNSF system does not provide economic access to Union Pacific points. Bunge's soybean meal rates from Emporia are designed by BNSF to take our traffic where BNSF wants us to market it for its own reasons with regard to economic costs, and not necessarily where Bunge may desire to market its products or where the market needs to product. BNSF's practices in this regard may be no different from those of other railroads following their mergers, but it is nevertheless true that those practices have foreclosed access by Bunge to important markets of this company's choice.

At least one other rail merger that has been proposed presents a similarly troubling picture. At present, approximately 30 percent of Bunge's soybean crushing capacity is captive to Burlington Northern Santa Fe and about 30 percent is captive to Illinois Central at five crushing plants, two of which are served by BNSF and three by IC. A consolidation of those two carriers will make nearly 60 percent of this company's total soybean crushing capacity captive to a single carrier system, and poses a repetition of the same type of marketing restrictions Bunge faced at Emporia following the merger of Burlington Northern and Santa Fe. This time, however, the stakes are much higher, since so much of our production would be involved.

The Interstate Commerce Commission and the Board have praised the virtues and public benefits of single line service resulting from a rail merger. Indeed, Bunge has itself stated publicly that single line service can offer transportation benefits. However, the single line benefits of a merger have yet to decisively outweigh the sales opportunities lost to Bunge when a merged carrier forecloses access to former or potential markets by imposing a single-system pricing regime.

In prior rail merger proceedings, the ICC and the Board have refused to recognize market foreclosures as an adverse merger consequence. In the ANPR, for example, the Board refers to its "one lump" theory, pursuant to which the Board and the ICC generally concluded that where a merger forecloses a receiver's access to one of two competitive product sources, placing the shipper in a position where its only product source is on the rail line of the delivering carrier, the receiver faces no cognizable merger harm.

Where the problem works in the reverse direction, so that the market circumscribed is not a source but instead is a consumption point, there likewise has been regulatory indifference in merger proceedings. This outlook by the ICC was manifest in the Burlington Northern/Santa Fe merger case. There, the ICC acknowledged that certain aspects of the merger, involving trackage rights agreements, would tend to expand the markets of Bunge's competitors while not doing the same for Bunge, but the ICC concluded "that will not be the kind of harm that we should rectify under our conditioning power." See Burlington Northern, et al. -- Merger -- Santa Fe Pacific, et al., 10 I.C.C. 2d 661, 782 (I.C.C., 1995).

The Board no longer should turn its back on the complete economic consequences of a merger or consolidation. It is commercial reality, experienced in fact by Bunge as described above, that merging carriers alter market access for their customers. Some customers may end up with expanded markets, but at the expense of other customers. Bunge does not believe that it is a proper function of a rail merger to allocate markets among competitors and Bunge does not believe that it is appropriate merger policy for the Board to condone such practices. Now that there are but a handful of Class I railroads left, each with a very substantial market share, market intervention by a merged carrier can have immense consequences, witness Bunge's loss of 25 percent of its total Emporia soybean meal market as a result of the BNSF merger.

Bunge believes that, in this proceeding, the Board should adopt rules which declare market curtailments to be against merger policy in general. Bunge recognizes that, following a merger, a carrier may recognize certain cost savings that justify rate reductions for single-line movements, and Bunge does not wish to imply that such rate reductions should be withheld from the merged carrier's customers, even where those reductions may alter pre-existing marketing relationships. Where marketing relationships are altered by rate reductions, however, the carrier should be prepared, and required by the Board if necessary, to justify the reductions in terms of lower costs or other factors that may have prompted the reduction. The Board should also require carriers to justify rate increases that alter or change market flows.

Where, however, a merged carrier had pre-merger competitive rates to or from a gateway, a merger condition should require the carrier to continue to offer access to and from the off-line markets. The specific form of that condition may vary from merger to merger, perhaps taking the form of trackage rights where appropriate or, where intramodal competition is not feasible, then taking the form of rate restrictions. Bunge would suggest that the appropriate form of such a rate restriction would prohibit the carrier from increasing its rates to or from competitive gateways

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing pleading to be served on all parties of record by first-class mail, postage prepaid, this 16th day of May, 2000.

Darrell R. Wallace